

affording coverage upon his/her/its personal property, the contents of his/her/its residence, and all components of the Living Unit not included in the Association Responsibility Elements (including, but not limited to, all floor, ceiling, and wall coverings and fixtures, betterments and improvements) and his/her/its personal property stored elsewhere on the Properties, and for his/her/its personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association. Each Owner may obtain casualty insurance at his/her/its own expense upon his/her/its Lot but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association pursuant to this paragraph due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided.

Section 6. Casualty and Restoration. Damage to or destruction of any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. If for any reason the Association chooses not to repair or reconstruct any Building damaged or destroyed by fire or

other casualty, the Declarant shall have the right, but not the obligation, to perform such repair or reconstruction and to collect the cost thereof from the Association.

Section 7. Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area or any Building or Buildings so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association, which shall then have the right to levy a special assessment against all Lots for the amount of such deficiency.

For the purposes of Section 6 above, repair, reconstruction, and restoration shall mean construction or rebuilding of any Building or Buildings to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same or similar type of architecture.

Section 8. Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Properties, or, in the discretion of the Board of Directors, may be distributed to the Owners of the Building affected and their Mortgagees who are the beneficial owners of the fund. The action of the Board of

Directors in proceeding to repair or reconstruct damages shall not constitute a waiver of any rights against Owner for committing willful or malicious damage.

## ARTICLE VII

### EASEMENTS

Section 1. Drainage, Utility, and Sewer Easements. As noted on the recorded Plat of Lot 2, Southwicke, Declarant has reserved certain areas of the Lots for Public Utility and Sewer Easements. In doing so, it is the intention of Declarant to provide the needed flexibility to itself, for the benefit of all Lots and Owners, to properly install and allow to be maintained and read all electrical, telephone, water, gas, sewer, and other utility services (including all lines, pipes, wires, cables, ducts, etc.) to the Living Units constructed on the various Lots. No other improvements or permanent structures (excluding walkways, driveways, and fences) shall be placed within such utility easements and any fences so installed shall be and are expressly subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any public or private utility to construct, maintain, repair, or remove any necessary facilities and the right of Declarant and the Association to provide for and maintain appropriate drainage. Regardless of whether shown on the recorded plat, each Lot shall accept surface water drainage from adjacent properties whether or not located within the properties and each Lot shall have the right to drain

its surface water to the adjacent Lots located within the properties.

Section 2. Additional Easement Rights. Declarant reserves unto itself, for the benefit of all Lots and Owners, an easement and full right, title, and authority to relocate, alter, or otherwise change the location of any drainage, utility, and sewer easement and to grant such further easements, licenses, and rights of way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within any Lot or Lots or any portion of the Properties. Declarant further reserves the right to more specifically describe or to change the description of any such drainage, utility and sewer easement, or other easement, license or right-of-way by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Polk County, Iowa and any Owner of any Lot shall take title subject to the right and easements reserved herein; provided, however, the rights reserved in this Section 2 shall not be exercised in a manner which unreasonably and adversely affects any Building or portion thereof located upon any Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress or egress to any Lot. The rights and easements reserved by Declarant in this Section 2 shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate when Declarant shall have conveyed the last Lot within the Properties or on January 1, 1995, whichever first occurs.

Section 3. Easement for Access and Maintenance. The Association, its agents, and contractors and each Owner shall have an easement and license to, in and over each Lot for the purpose of performing its maintenance obligations and for access to the rear of the Lot owned by such owner.

Section 4. Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, public and private, over and upon all Lots for benefit of others and any pedestrian walkways or sidewalks.

Section 5. Easement for Signs. Declarant reserves unto itself for so long as it owns any Lot, and thereafter reserves and grants to the Owners by and through the Association, the right and easement to erect and maintain an entryway sign or signs.

Section 6. Driveways and Entrances. An easement is hereby reserved and granted for the use of all Lots served by one driveway over said driveway. To the extent that a driveway serving a Living Unit is located partially or wholly on another Lot or Lots, the Living Unit owners served by such driveway shall have the benefit of any easement over that portion of the other Lot or Lots covered by the driveway. This driveway easement shall be for ingress and egress purposes and no Lot Owner shall park or allow to be parked any vehicular or other obstruction within the driveway area so as to prevent access to the Living Units that such driveway serves. Further, there is hereby reserved and granted an easement for the

benefit of each Lot served by a sidewalk and pedestrian walkway located partially or wholly on another Lot or Lots. In the event Living Units are served by a shared front entry stoop and to the extent of such shared stoops a reciprocal easement is granted for the benefit of each served by such shared entry stoop. No unit Owner shall obstruct or allow obstructions on any sidewalk or pedestrian walk or shared entry stoop which would impair use and access by the Living Unit Owner which such sidewalk or entry stoop serves.

Section 7. General Easements. Each Lot shall be subject to the following easements, in favor of the Association and the other Owners:

- (a) Every portion of a structure upon a Lot which contributes to the support of any structure not on the same Lot is burdened with an easement of such support.
- (b) Each Lot is burdened with an easement through the Lot and through the attic and basement of any structure thereon for conduits, ducts, plumbing, wiring, pipes, and other facilities for the furnishing of utilities and services to other Lots, including the location of utility meters on one Lot for service to other Lots.
- (c) Each Lot is burdened with an easement of ingress and egress for maintenance, repair, and replacement of Association Responsibility Elements by the Association.

- (d) Each Lot is burdened with an encroachment easement for minor encroachments of common walls due to settling, shifting, or inexact location during construction.
- (e) Each Lot is burdened with easements for public utilities and sidewalks as may be shown upon any recorded subdivision plat.

## ARTICLE VIII

### PARKING RIGHTS

Subject to the provisions of Article VII, Section 6, above, the paved driveway in front of each Owner's garage shall be for the exclusive benefit of such Owner and his/her/its guests. No one shall use these parking spaces for parking or storing of boats, snowmobiles, trailers, camping vehicles, or other recreational vehicles, or for parking of trucks or other commercial vehicles, except temporarily or incidentally for the making of pickup and deliveries to neighboring Lots. No bicycles, toys, or other private property shall be allowed to obstruct any driveway, nor shall the same be stored in the open alongside building walls or other locations of public view. No vehicles shall be parked as to impede access from or to any Lot or public street. No fence, barrier, or other obstruction of any kind shall ever be placed or constructed so as to impede access from or to any Lot or public street. No fence, barrier, or other obstruction of any kind shall ever be placed or constructed so as to impede access from or to any Lot or public street.

## ARTICLE IX

### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing lines between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The costs of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his/her/its negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right of Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this



Article shall be appurtenant to the land ~~and shall~~ pass to such Owner's successors in title.

#### ARTICLE X

##### ARCHITECTURAL CONTROL

No building, fence, wall, or other structure, except as originally constructed by or on behalf of Declarant, shall be commenced, erected, altered, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein, other than by the Board of Directors, be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. Any change in the appearance or the color of any part of the exterior of a residence (including the exterior items for which the Owner is responsible for maintenance pursuant to Article V, Section 1, hereof) shall be deemed a change thereto and shall require the approval therefor as above provided.

#### ARTICLE XI

##### SIGNS AND HOME OCCUPATIONS

Section 1. Signs. No signs of any kind including rental signs (other than interior window signs) and further including signs of any nature, kind, or description that identify, advertise, or in any way describe the existence or conduct of a home occupation, shall be displayed on any Lot without the prior written

approval of Declarant; provided, however, that an Owner shall be entitled to display on his/her/its Lot one (1) "for sale" sign of standard and customary size and materials in connection with attempts by the Owner to market that Lot. Nothing in this Article shall affect the rights of Declarant provided in Article IV.

Section 2. Home Occupations. No home occupation shall be conducted or maintained on any Lot other than one which is incident to a business, profession, or occupation of the Owner or occupant of any such Lot and which is generally or regularly conducted in another location away from such Lot. No child-care service or activity shall be regularly conducted on any Lot, except for incidental child care activities for the sole benefit of the Owner of a Lot. Nothing contained herein shall be construed or interpreted to affect the activities of Declarant in the sale of Lots or single-family dwellings as a part of the development of the Properties.

## ARTICLE XII

### ENCROACHMENTS AND EASEMENTS FOR BUILDINGS

Section 1. Encroachment. If, by reason of the location, construction, settling, or shifting of a Building, any part of a Building consisting of single-family residence appurtenant to a Lot (hereinafter in this Article XII referred to as the "Encroaching Unit") encroaches upon any minor portion of any other adjacent Lot, then in such event, an exclusive easement shall be deemed to exist and run to the Owner of the Encroaching Unit for the maintenance, use, and enjoyment of the Encroaching Unit and all appurtenances thereto, for the period during which the encroachment exists.

Section 2. Easements. Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines, and other common facilities located in or on any other Lot or dwelling unit and serving his/her/its Lot.

### ARTICLE XIII

#### ADDITIONAL RESTRICTIONS

Section 1. No Lot shall be used except for residential purposes, as defined in the West Des Moines Zoning Ordinance as applicable to the "R-5" zoning district, except for rights of Declarant as provided in Article IV. No buildings, structures, or sheds shall be erected on any Lot other than the Living Units or replacements thereof.

Section 2. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot except that no more than one (1) dog and one (1) cat weighing less than 15 pounds at full growth may be kept, provided that they are not kept, bred, or maintained for any commercial purposes. The Association may, by rules and regulations, prohibit or further limit the raising, breeding, or keeping on any Lot, front lot, or rear lot of any pet.

Section 3. No noxious or offensive activities not involving the maintenance of Lots shall be carried on upon any Lot nor shall anything be done thereon that may be or may become an annoyance or a nuisance to the neighborhood; nor shall any Lot be used for any unlawful purpose. Nor shall any Owner cause, or suffer or harbor the source of, any noise or activity that disturbs the peace, comfort, and quiet enjoyment of other Owners or those claiming

under or through other Owners.

Section 4. The Owner of each Lot shall keep the same free of weeds and debris.

Section 5. No trash receptacles and garbage cans shall be permitted to be placed outside of a building or a structure on any Lot unless hidden by an attractive screen of suitable height, or unless sunken to ground level in a hole lined with permanent cribbing. This restriction shall not preclude the placement of waste containers outside of such area on a temporary basis if so required by governmental regulation.

Section 6. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other building shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 7. No television or radio antennae shall be placed upon the exterior of a Lot or Living Unit.

\* Section 8. No basketball goal (whether attached to the exterior of a Living Unit or affixed to a free-standing pole), soccer goal, baseball backstop, or other similar sporting equipment shall be constructed upon any Lot.

Section 9. All unattached sporting equipment, toys, outdoor cooking equipment, and other equipment and supplies necessary or convenient to residential living shall be stored on the patio or deck of the Living Unit. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious weed or other noxious substance, and the harboring of the source of any noise or activity which

disturbs the peace, comfort, and serenity of owners is prohibited.

Section 10. Unit Owners shall be individually responsible for utility charges which they incur for water and sewer services, in the same manner as persons occupying single-family, detached houses.

Section 11. No fence shall be allowed to be constructed on any Lot unless prior written approval from the Board of Directors of the Association has been granted. Any such fence so approved by the Association shall be limited to privacy or decorative fences located around the decks or patios of the Living Units.

Section 12. No personal property shall be stored or left upon a Lot except within the residential structure or garage located upon the Lot. Garage doors shall be kept closed except during times of access to the garage.

Section 13. Nothing shall be altered in, constructed in, or removed from the Common Area, except upon written consent of the Board of Directors of the Association, which may be given through regulations of the Associations.

Section 14. No boat, snowmobile, recreational vehicle, trailer, or other vehicle other than automobiles shall be stored or parked in any driveway or street. The Association may, by regulation or rule, limit or prohibit the parking of automobiles on any driveway. In the event of violation of this provision, the Association may, after reasonable notice, remove such boat, snowmobile, recreational vehicle, trailer, or other vehicle.

Section 15. No activity shall be allowed which unduly interferes with the peaceful possession and use of the property by the

Owners nor shall any fire hazard or unsightly accumulation of refuse be allowed.

Section 16. Nothing shall be done or kept in any Lot or in the Common Area which will increase the rate of insurance on the Common Area or the Association Responsibility Elements, without the proper written consent of the Board of Directors of the Association. No Owner shall permit anything to be done or kept in his/her/its Lot or in the Common Area which will result in the cancellation of insurance on any Lot or any part of the Common Area or the Association Responsibility Elements, which would be in violation of any law, or which may be or become a nuisance or annoyance to the other Owners.

Section 17. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies that require maintenance modification or repair of property shall be the same as the responsibility for the maintenance and repair of the property concerned.

Section 18. The Board of Directors of the Association shall have the authority to adopt rules and regulations governing the use of Lots, the Common Area, and the Association Responsibility Elements and such rules shall be observed and obeyed by the Owners, their guests, lessees, assigns, and licensees.

Section 19. Agents or contractors hired by the Board of Directors of the Association may enter any Lot when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible, provided such entry shall be

made with as little inconvenience to the Owners as practicable.

Section 20. Neither the Owners nor the Association nor the use of the Common Area shall interfere with the completion of the contemplated improvements and the sale of the Lots by the Declarant. The Declarant may make such use of the unsold Lots and the Common Area as may facilitate such completion and sale, including, but not limited to, the maintenance of a sales office, model home, the showing of the property and the display of signs.

Section 21. No Waiver. Failure of the Association or any Owner to enforce any covenant, condition, or restriction, this Declaration, the Articles of Incorporation, or Bylaws of the Association, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to enforce the same thereafter.

#### ARTICLE XIV

##### GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions, and restrictions herein enumerated, Declarant, the persons in ownership from time to time of the Lots and all parties claiming under them, and the City of West Des Moines (if it so elects by approval of its City Council) shall have the right to enforce the covenants, conditions, and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

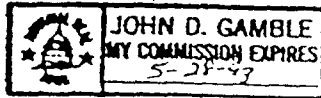
Section 2. Amendment. This Declaration may be amended or changed at any time within ten (10) years following the date of

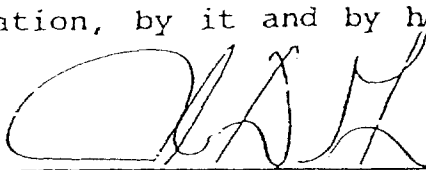
recordation by an instrument recorded in the Office of the Recorder of Polk County, Iowa, signed or approved in writing by a majority of the then Owners; provided, however, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. This Declaration may also be amended by Declarant, if it then has any ownership interest in the Properties, at any time within four (4) years after the recordation hereof in order to satisfy the requirements of any of the Federal Mortgage Agencies. Any such amendments shall be recorded and shall be subject to the prior written approval of any of the Federal Mortgage Agencies having an interest in the Properties or any portion thereof. This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty-one (21) years from the date of recordation in the Office of the Recorder of Polk County, Iowa, and shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten-year period it is amended or changed in whole or in part as hereinabove provided. Invalidation of any of the covenants, conditions, and restrictions of this Declaration by judgment or decree shall in no way effect any of the provisions hereof, but the same shall remain in full force and effect.

Section 3. Notice to Mortgagees. The Association, upon request, shall provide written notification to any lender holding a first mortgage upon any Lot specifying the defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations



act and deed of said corporation, by it and by him voluntarily executed.



  
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